

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/21/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000657

FILED: _____

STATE OF ARIZONA

BARTON J FEARS
ROBERT KENT MCCARTHY

v.

LLOYD BILBY GARTIN

JEREMY PHILLIPS

FINANCIAL SERVICES-CCC
PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #5852071; 5852072

Charge: 1. DUI OR APC
2. DUI W/AC OF .10 OR HIGHER
3. EXTREME DUI
4. FAIL TO CONTROL SPEED TO AVOID COLLISON
5. DRIVING ACROSS/UPON MEDIAN

1. NO MANDATORY INSURANCE
2. NO CURRENT REGISTRATION

DOB: 12/15/37

DOC: 04/07/02

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/21/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000657

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since oral argument on May 22, 2002. This Court has considered the record of the proceedings from the Phoenix City Court, the Memoranda submitted by counsel and the oral argument of counsel.

Appellant contends that the trial judge erred in this DUI case by admitting statements made by Appellant to Phoenix Police officers. Specifically, Appellant contends now, as he argued at trial, that the trial judge may not consider hearsay evidence in making a legal determination that the *corpus delicti* has been met as a prerequisite for the admissibility of Appellant's statements to the Phoenix Police officers.¹ Both parties acknowledged that Arizona law is well settled that proof of the *corpus delicti* independent of a suspect's confession is required as a prerequisite to the admissibility of the confession.² The *corpus delicti* requirement is met in a criminal case when the State offers evidence of facts to support a reasonable inference that the crime which is charged was actually committed by some person.³ The *corpus delicti* evidence must be independent of the statements which the State seeks to offer.⁴ The State need only to prove "a reasonable inference" that a crime was committed and

¹ See Appellant's Opening Memorandum, at page 3.

² State v. Weis, 92 Ariz. 254, 375 P.2d 735 (1962), cert. denied, 389 U.S. 899, 88 S.Ct. 226, 19 L.Ed.2d 221 (1967); State ex rel. McDougall v. Superior Court, 188 Ariz. 147, 933 P.2d 1215 (1996).

³ State v. Hernandez, 83 Ariz. 279, 320 P.2d 467 (1958); State ex rel. McDougall v. Superior Court, supra.

⁴ Id.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/21/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000657

some person committed the crime.⁵ The evidence establishing *corpus delicti* maybe entirely circumstantial.⁶

In this case the trial judge permitted the State to offer the testimony of Phoenix Police Officer Mario Ancich outside the presence of the jury.⁷ The trial judge specifically found that hearsay evidence is admissible for purposes of establishing *corpus*, and permitted Officer Ancich to testify outside the presence of the jury about hearsay statements made by civilian witnesses who observed Appellant's one-car accident, and Appellant fleeing the scene.⁸

Rule 104⁹ provides in regard to preliminary questions of admissibility of evidence:

(a) Questions of admissibility generally.

Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the Rules of Evidence except those with respect to privileges.

The trial judge relied upon Rule 104, as quoted above, in making a determination, outside the presence of the jury, concerning the admissibility of Appellant's statements to the Phoenix Police officers. At the conclusion of the hearing outside the presence of the jury the trial court held:

⁵ State v. Gillies, 135 Ariz. 500, 662 P.2d 1007 (1983).

⁶ State v. Rivera, 103 Ariz. 458, 445 P.2d 434 (1968), cert. denied, 395 U.S. 929, 89 S.Ct. 1790, 23 L.Ed.2d 238 (1969); State ex rel. McDougall v. Superior Court, supra.

⁷ R.T. of August 8, 2001, at page 36.

⁸ Id.

⁹ Arizona Rules of Evidence.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

06/21/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000657

Counsel, I've reviewed the cases that you provided, particularly the Plummer case, and the Rivera case specifically. And based on my understanding of Plummer, which I believe is dispositive in this matter, I find that the State has established sufficient evidence of *corpus* in this matter. And based on the testimony of Officer Mario Ancich and the hearsay remarks made to him by the civilian witnesses that he contacted, there was sufficient basis for him to believe that a crime had been committed.¹⁰

This Court finds no error by the trial court in considering hearsay evidence pursuant to Rule 104.¹¹ Hearsay evidence is admissible for the limited purpose of determining the admissibility of evidence, such as the evidence of the statements made by Appellant to the Phoenix Police officers. This Court concurs with the trial court's conclusion that the *corpus delicti* was established and that the statements Appellant made to the Phoenix Police officers were therefore admissible.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

¹⁰ R.T. of August 8, 2001, at page 54.

¹¹ Ariz. Rules of Evidence.